IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.104 OF 2005
IN
SUMMARY SUIT NO.2952 OF 2004

Bhupender Singh Sawhney ....Plaintiff
V/s.
M/s.Rajesh Kumar & Co. & Ors. ....Defendants

Mr.Q.M. Ashfaq for the Plaintiff.
Mr.Chirag Balsara with Ms.Sabeena Mahadik for Defendant Nos.1 to 3.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH DECEMBER, 2005.

P.C. :

1. The suit is filed to recover the amounts lent and advanced by the Plaintiff to Defendant No.1. Defendant Nos.2 and 3 are the partners of Defendant No.1.

2. The loan is evidenced by a promissory note executed by Defendant No.1.

3. The promissory note is purported to be dated 2.2.2001.

4. I will assume that there is some infirmity in the promissory note as alleged by the Defendants. However, the suit is also based on confirmation of loan dated 31st March, 2001 and a dishonoured cheque

dated 15th October, 2001.

5. The Defendants do not deny the fact that they received the loan from the Plaintiff. They do not deny the execution of the confirmation letter dated 31st March, 2001. They do not deny the fact of having issued the cheque of 15th October, 2001.

6. The first defence is that the Plaintiff is a money lender. There is not a single averment in the affidavit in reply to this effect. In the circumstances, the defence is without any substance.

7. The next defence is that there was a composite transaction by which the Plaintiff and his mother advanced an aggregate amount of Rs.10,00,000/-. The Plaintiff’s mother admittedly advanced a sum of Rs.7,50,000/-. It was further submitted that the Plaintiff’s mother in turn has failed to repay an amount of Rs.15,00,000/- lent and advanced by Defendant No.1 to the Plaintiff’s mother. For this reason, it is contended that the Defendants are entitled to a set-off. The Defendants’ case is that the Plaintiff’s mother in repayment of the alleged loan, issued a cheque in the sum of Rs.15,00,000/- which was dishonoured. The Plaintiff has firstly

contended that the cheque itself is fabricated and even the signature thereon is forged. It is not necessary for me to consider this case of the Plaintiff.

8. In the support of the contention that it was one composite transaction, Mr.Balsara, the learned counsel appearing on behalf of Defendant Nos.1 to 3 relied upon paragraphs 2 and 3 of the plaint. The contention is unfounded. The Plaintiff has merely averred that Defendant No.1 was in need of funds and in view thereof, his mother advanced Rs.7,50,000/- and the Plaintiff advanced a sum of Rs.2,50,000/-. The two loans are separate. There is nothing to suggest that there was any intermingling of accounts or transactions.

9. It is also pertinent to note that the Plaintiff’s mothers alleged cheque was dishonoured on 20th May, 2004. The suit cheque dated 15th October, 2001 was dishonoured over two years ago.

10. In the circumstances, there is no defence to the suit. The Summons for Judgment is made absolute and the suit is decreed as prayed with costs. However, interest after the date of filing of the suit

shall be at the rate of 18% p.a.

. Refund as per rules.